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Reassessing Command: The Relevance of John Austin's Legal Positivism in Contemporary Criminal Law

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[1]John Austin, The Province of Jurisprudence Determined (1832; Hackett Publishing 1998).
[2]ibid 13-15

Abstract
This paper critically re-evaluates John Austin's command theory of law in the context of twenty-first-century criminal law. Rooted in classical legal positivism, Austin's view of law as a sovereign's command backed by sanctions has long influenced jurisprudential thought, especially in relation to public and criminal law. However, the evolution of modern criminal justice systems—characterized by principles of moral culpability, procedural fairness, proportionality, and distributed legislative authority—raises fundamental questions about the continued applicability of Austinian theory. Through a doctrinal and analytical approach, this study examines the core elements of Austin's theory—sovereignty, command, sanction, and habitual obedience—against key constructs of criminal liability such as mens rea, actus reus, legality, justification, and excuse. Drawing on critiques from thinkers like H.L.A. Hart and the transition from command-based to rule-based jurisprudence, the paper assesses whether Austin's model remains a useful analytical tool or falls short in capturing the normative and interpretive demands of contemporary criminal law. The study concludes that while Austin's model retains structural utility in understanding legal coercion, it requires significant conceptual expansion to remain theoretically relevant in today's pluralistic and moralized legal landscapes.

Keywords: John Austin, Command Theory, Legal Positivism, Criminal Law, Moral Culpability

INTRODUCTION

Contemporary legal theory's ideas much reflect early positivist concepts of John Austin, whose formulation of law as a command from a sovereign to subjects under the prospect of consequence has profoundly shaped jurisprudential conversation. Austin's argument in The Province of Jurisprudence Determined (1832) marked a vital shift from metaphysical and religious readings of law to a more methodical, empirical, and secular understanding of legal systems. His approach was founded on the belief that ethical evaluation should be separate from legal inquiry—what the law is must be conceptually different from what the law ought to be. Austin's theory created a strong framework for the development of legal positivism, which came to dominate Anglo-American legal thought during the nineteenth and twentieth centuries.[1] His command theory claims that law is made up of universal instructions from a certain sovereign enforced by penalties for noncompliance.[2] Aimed towards the

[1] John Austin, *The Province of Jurisprudence Determined* (1832; Hackett Publishing 1998).
[2] ibid 13-15

governed public, these orders get their legal standing not from moral justification or social utility but from the sovereign's power and the subjects' habitual compliance.[3] Traditionally, public law has resonated with this formalist view of law, particularly with regard to criminal legislation, where the forceful and guiding qualities of legal concepts are most clear. Austin's view of law as a coercive command seems to fit the punitive tools of the criminal justice system—from fines to imprisonment.[4] Still, modern criminal law has evolved into a more complicated and normative institution including aspects of guilt, proportionality, and procedural justice that might exceed the explanatory range of Austin's theory.[5] The main research issue this study seeks to answer is: To what degree, both theoretically and practically, does John Austin's command theory of law remain relevant and applicable to modern criminal law? This study calls for a double analysis: first, of the conceptual framework of Austin's legal theory, and second, of the substantive and procedural components of criminal law as today understood and applied across legal systems. This paper aims to critically evaluate Austin's theory on its comparability, adaptability, and limitations within the moral and institutional settings of twenty-first-century criminal law. This paper contends that while Austin's theory offers a brief and maybe convincing description of the coercive quality of law, it might be too vague to properly address the moral and interpretive components underlying modern criminal liability. Modern criminal law's emphasis on the moral culpability of the accused, as shown by mens rea (the guilty mindset) and the theories of justification and excuse, runs counter to Austin's morally neutral view. Furthermore, the dynamic and dispersed nature of legislative and judicial power in constitutional democracies challenges the coherence of Austin's vision of a single, clear sovereign. This paper tackles the research topic using a doctrinal and analytical approach.[6] Beginning with a thorough examination of Austin's command theory, the book clarifies its basic components—sovereignty, command, sanction, and habitual obedience—so placing them within the broader context of legal positivism. The paper then examines the theory and organisation of criminal law, questioning its normative foundations, basic tenets, and practical practices. The ideas of criminal guilt, punishment, and legislative power are given great importance.[7] This study seeks to assess the harmony between Austin's theory and the complex reality of criminal law, hence highlighting areas of conceptual difference. The following chapter methodically reconstructs Austin's legal theory, following its intellectual lineage from Hobbesian absolutism to Benthamite utilitarianism.[8] It then evaluates notable criticisms of Austin's theory, including those suggested by HLA Hart, who challenged Austin's reductionist perspective on legal systems and offered a more nuanced framework of fundamental and secondary norms. Hart's criticism and the general movement from command to rule-based legal theories provide a necessary background for assessing the viability of Austinian positivism in criminal law.[9] Later chapters will investigate particular facets of criminal law that either reinforce or question the applicability of Austin's paradigm. The principles of legality and fair labelling, as well as the discretionary techniques of enforcement and adjudication, will be closely examined in this study together with the ideas of actus reus and mens rea. The study will assess if these characteristics may be included into a command theory or whether they call for a change towards more interpretive or

[3] ibid 16-18
[4] Duff, *Punishment, Communication, and Community* (OUP 2001) 42.
[5] Lucia Zedner, *Criminal Justice* (OUP 2004) 45–46.
[6] Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (9th edn, OUP 2023) 73–78.
[7] Glanville Williams, *Textbook of Criminal Law* (2nd edn, Stevens 1983) 18–20.
[8] Jeremy Bentham, *Of Laws in General* (HLA Hart ed, Athlone Press 1970) 1–14.
[9] HLA Hart, *The Concept of Law* (2nd edn, Clarendon Press 1994) ch 2 and 6.

moralised conceptions of law. The last part of the paper will combine the findings of the previous investigation with a critical evaluation of Austin's continuing relevance in contemporary criminal law. This paper argues that while the coercive structure of criminal prohibitions superficially resembles Austinian commands, the interpretive complexity and normative relevance of modern criminal law demand a larger theoretical framework. The paper does not completely dismiss Austin's contributions, however; rather, it contends that his model has analytical value in clarifying particular structural features of state authority and legal coercion, especially in systems where law mostly acts as a control instrument.[10]

Elements of Criminal Law and the Austinian Paradigm

A fundamental articulation of legal positivism is John Austin's perspective of law as a mandate from a sovereign enforced by penalties. Austinian law basically depends on a formalist and coercive interpretation of law whereby legal norms derive their binding power not from moral content or social consensus but from their promulgation by a politically powerful entity and their enforcement by means of punitive threats. A field usually characterised by its emphasis on prohibitions, state enforcement, and the preservation of public order, criminal law has seen notable popularity for this idea.[11] This chapter aims to investigate the convergence of Austin's command theory with the basic structural components of criminal law, hence assessing the clear parallels as well as the conceptual limitations of this framework. As a distinct area of legal control, criminal law emphasises the definition, limitation, and punishment of acts deemed harmful or threatening to personal rights and the societal group interests. It reflects society's moral expectations and normative standards, hence functioning both as a deterrent and a punishing tool.[12] Fundamentally, criminal law is made up of three main components: the definition of prohibitions (e.g., "Thou shall not kill"), the institutional application of penalties on offenders, and a justificatory emphasis on maintaining public order and collective security.[13] These factors help to make criminal law a good stage for assessing the practical relevance of Austin's jurisprudential theory.

The main and most obvious point of contact between Austin's theory and criminal law lies in the character of legal prohibitions. Austin described laws as "a kind of command," meaning they reflect a superior's desire or objective and come with the possibility of negative repercussions for non-compliance.[14] Legal laws in this system are one-sided orders issued by a sovereign meant for subjects and carried out by penalties. Criminal bans, such laws prohibiting murder, theft, or assault, clearly show this directive structure: they require people to avoid particular behaviours and punish them severely for violations. Austin's view of law fits well with the methodical creation of criminal norms—usually expressed in prohibitive or mandatory language. The legal definition of crimes in modern penal codes, typified by "Whoever commits murder shall be punished with death or imprisonment for life" in Section 302 of the Indian Penal Code, and "A person who steals shall be liable to imprisonment" in the Theft Act 1968 in the United Kingdom, serve as perfect examples of Austinian commands.[15] These rules are from an accepted authority and come with penalties for infractions, thus they not just reflect social disapproval. A purely command-based view on criminal prohibitions misses important nuances. Modern

[10] Matthew H Kramer, *In Defense of Legal Positivism: Law Without Trimmings* (OUP 2003) 99–103.
[11] John Austin, *The Province of Jurisprudence Determined* (1832; Hackett Publishing 1998) 13–15.
[12] Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (9th edn, OUP 2023) 27
[13] Antony Duff and Sandra Marshall, *Criminalization: The Political Morality of the Criminal Law* (OUP 2014) 19–20.
[14] Austin (n 1) 18–20.
[15] Indian Penal Code 1860, s 302; Theft Act 1968, s 1.

criminal law includes concepts of justice, culpability, and legitimacy in addition to behavioural control.[16] Legal prohibitions are understood and enforced within a multifarious system of defences, justifications, and mental states—such as mens rea and actus reus—which cannot be properly represented by the notion of a simple directive. This suggests that while Austin's model clearly shows the surface structure of criminal prohibitions, it overlooks the interpretive and normative elements guiding their application.[17]

The basis of Austin's legal theory is his description of the sovereign as a clear and supreme political power whose orders are always followed. In criminal law, the practical equivalent of Austin's sovereign is usually the legislature or the state, which creates criminal laws and defines penalties.[18] Constitutionally, the power to define crimes and punishments belongs to those recognised by constitutional and legal criteria as qualified legislators. These organisations have the power to create binding legal orders, hence this institutional delegation fits Austin's concept of sovereignty. But Austin's rigid and single reading is very different from the sovereignty paradigm operating in contemporary liberal democracies.[19] All of which distribute and restrict the use of legislative and executive power, contemporary legal systems are defined by constitutionalism, the separation of powers, judicial scrutiny, and the rule of law.[20] Organised discourse, controlled by procedural safeguards and substantive limits, shapes legislation not the only domain of individual choice. Austin's theory falls short in dealing with the complexity of modern democratic administration and the various normative origins shaping the legal order.[21] Furthermore, the reading and application of criminal laws could include judicial discretion, adding another layer of power that cannot be readily simplified to fit a sovereign's orders. All of which influence the character and degree of criminal liability, judges read laws, settle uncertainties, and build common law ideas. These court actions show that legal standards in criminal law are not only published but also created and contested inside institutional structures. Though simple, Austin's sovereign-command model does not cover the institutional diversity and moral dynamism natural in criminal law creation.

Criminal law most clearly exemplifies the coercive character of law emphasised by Austin's concept of penalty. The basic tenet of criminal law is its capacity to penalise those who violate its restrictions.[22] Austin called punishments the "evil" connected to disobedience, which both deters and enforces. Criminal penalties—including imprisonment, monetary fines, probation, and, in some nations, capital punishment—fulfil this particular goal.[23] The application of penalties in criminal law closely fits Austin's concept. The possibility of serious consequences ensures compliance with legal criteria and supports the validity of the legal system. Imposing jail on conviction serves as both a retributive response for moral violations and a warning for possible criminals. This lends credence to the view that criminal law, especially in its application, shows Austin's notion of law as a forceful command. Modern punishment theories show a more complex setting.[24] Deterrent thoughts as well as ideas of proportionality, desert, and rehabilitation control the application of punishments. Sentencing rules,

[16] Glanville Williams, *Textbook of Criminal Law* (2nd edn, Stevens 1983) 15–18.
[17] Victor Tadros, *Criminal Responsibility* (OUP 2005) 41–43.
[18] Austin (n 1) 196–200.
[19] HLA Hart, *The Concept of Law* (2nd edn, Clarendon Press 1994) 50–55.
[20] Neil MacCormick, *Institutions of Law* (OUP 2007) 98–100.
[21] Matthew Kramer, *In Defense of Legal Positivism* (OUP 2003) 116.
[22] Lucia Zedner, *Criminal Justice* (OUP 2004) 89–91.
[23] Austin (n 1) 27–29.
[24] Ashworth and Horder (n 2) 78–79.

procedural safeguards, and appellate procedures ensure that punishment is carried out in compliance with constitutional and human rights criteria. These changes suggest that criminal penalties are part of a moral and procedural framework meant to preserve individual dignity and systematic legitimacy, not only as tools of coercion.[25] Though Austin's idea of sanctions is relevant, it needs to be supplemented with a more thorough knowledge of criminal philosophy and law since then.

Many people justify criminal law by saying it serves to protect public interest, maintain social order, and ensure fundamental rights and liberties. It defines the boundaries of acceptable conduct and expresses society's condemnation of harmful deeds, hence providing a means of normative reinforcement.[26] Though not relevant to Austin's theory, the justification is implied in his emphasis on the use of legal coercion to preserve the stability of the sovereign's power. Still, Austin's method mostly eschews any moral basis for legal norms.[27] His theory ignores the expressive and ethical roles of criminal law by his emphasis on the difference between law and morality.[28] Modern law increasingly recognises these roles. Beyond simply implementing laws, criminal trials provide public venues for confirming shared values and reinforcing society norms.[29] Austin's formalist theory falls short in explaining the legitimating stories supporting the criminal justice system.

Austin's philosophy shows a formalist view of law, giving clear, determinacy, and hierarchical authority top priority. This approach fits well with criminal law, defined by its regulated punishments and methodical requirements. Positivist theories of criminal law stress accuracy in legal draughting, consistency in enforcement, and moderation in judicial interpretation—all traits of legal formalism.[30] Still, the actual application of criminal law sometimes calls for departures from rigorous formalism. Evaluating mens rea, clarifying ambiguous legislative language, and harmonising competing rights call for a degree of legal thinking beyond simple mechanical rule application.[31] Moreover, the growing influence of constitutional values, human rights criteria, and international norms has included some moral thinking and teleological reading into criminal prosecution. This development challenges the sufficiency of Austin's formalism in clarifying the operation of criminal law inside contemporary legal systems.

Critical Review: Expansions and Limitations

Though especially with modern criminal law, John Austin's command theory of law has come under great attack, especially in classical legal positivism. Austin's model offers theoretical simplicity and analytical clarity by viewing laws as the supreme commands of a sovereign carried out by sanctions.[32] Austin's conceptual framework's sufficiency has been seriously challenged by the increasing complexity of legal systems, the evolving role of the courts, the incorporation of moral reasoning into criminal law, and the focus on subjective guilt (as shown by mens rea). This chapter questions the validity of the Austinian paradigm in the light of contemporary legal reality by means of a thorough examination of these traits.

[25] Andrew von Hirsch, *Censure and Sanctions* (Clarendon Press 1993) 12–14.
[26] Duff and Marshall (n 3) 30–34.
[27] Austin (n 1) 133.
[28] Hart (n 9) 181–186.
[29] RA Duff, *Trials and Punishments* (Cambridge University Press 1986) 41–43.
[30] Jeremy Horder, *Ashworth's Principles of Criminal Law* (10th edn, OUP 2022) 63–65.
[31] Nicola Lacey, *State Punishment* (Routledge 1988) 95–97.
[32] John Austin, *The Province of Jurisprudence Determined* (1832; Hackett Publishing 1998) 13.

A major criticism of Austin's theory is the role of the court. Austin's system holds that laws are orders from a particular sovereign to whom society regularly submits.[33] This description presumes a hierarchical, top-down view of legal power and underplays the role of courts as law generators. Through the notion of precedent and constitutional interpretation, the judiciary in modern constitutional democracies not only enforces current laws but also interprets, refines, and sometimes creates legal concepts. Judicial decisions in criminal law often define the limits of responsibility by means of interpretation of unclear statutory language, recognition of new defences, or promotion of ideas like necessity and proportionality.[34] The House of Lords decision in R v G and others[35] greatly changed the degree of recklessness in English criminal law, hence affecting the concept of criminal liability. Exemplified by Navtej Singh Johar v Union of India[36], in which Section 377 of the Indian Penal Code, 1860 was read narrowly, Indian constitutional law has seen the judiciary invalidate penal measures infringing basic rights. These instances violate Austin's strict separation between law-makers (sovereigns) and law-appliers (subordinates). Moreover, Austin's concept of a "sovereign" is basically monolithic and does not fit the distributed and dialogic nature of power in modern legal systems.[37] Courts have constitutional power on their own and operate with institutional independence. Instead of getting direct orders from any identifying authority, they are in charge of maintaining the integrity of the legal system, especially via means of judicial review.[38] Fundamentally, Austin's command theory, defined by its static and unidirectional perspective of legal authority, fails to capture the dynamic and reciprocal interactions shaping modern criminal adjudication.

Austrian was a passionate legal positivist who maintained a rigorous separation between law and ethics.[39] He claims that the existence of law is apart from its value or drawbacks. Though helpful in specifying the analytical boundaries of legal analysis, this theoretical difference becomes debatable when applied to criminal law, which often depends on moral condemnation of particular actions. Not just because they violate sovereign orders but also because they are morally repugnant, murder, rape, theft, and perjury are criminalised.[40] Moreover, the creation of criminal responsibility calls for a normative evaluation of guilt and desert. Criminal law is not only about punishment; it has to prove them by citing ideas of justice, fairness, and proportionality.[41] Both the character of criminal offences and the adjudicative procedures include the moral component. The mens rea criterion ensures that only people judged blameworthy suffer punishment, hence complementing moral values of personal action and purpose. Legal regimes often punish deeds that violate moral norms; in democratic countries, lawmakers usually respond to changing moral views. Examples of legal reform resulting from moral development include the decriminalisation of homosexuality, the criminalisation of marital rape, and the application of hate speech laws.[42] This exchange questions Austin's claim on the irrelevance of moral standards in respect to the validity or existence of legal rules. H.L.A. Hart's criticism of Austin precisely identifies

[33] ibid 195–200.
[34] Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (9th edn, OUP 2023) 80–83.
[35] *R v G and another* [2003] UKHL 50, [2004] 1 AC 1034.
[36] *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.
[37] HLA Hart, *The Concept of Law* (2nd edn, Clarendon Press 1994) 50–55.
[38] Aharon Barak, *The Judge in a Democracy* (Princeton University Press 2006) 25.
[39] Austin (n 1) 157.
[40] Antony Duff, *Punishment, Communication, and Community* (OUP 2001) 43.
[41] Victor Tadros, *Criminal Responsibility* (OUP 2005) 45.
[42] Glanville Williams, *Textbook of Criminal Law* (2nd edn, Stevens 1983) 47.

this flaw.[43] Hart argues in The Concept of Law that Austin's theory neglects the "internal point of view" legal officials and people have about legal norms, a perspective in which laws are seen as standards to be followed.[44] Often based on a supposed moral legitimacy, this acceptance is not only based on the fear of punishment. Therefore, at the junction of force and moral evaluation, criminal law exposes the flaws in Austin's moral scepticism.

Austin's theory has another disadvantage in its flat and consistent perspective on legal regimes. His model presumes a single source of law, a definitive monarch, and a passive population of subjects. Modern legal systems are decentralised, pluralistic, and susceptible to internal evolution. Constitutional democracies include many normative sources—laws, court decisions, constitutional papers, administrative rules, and international obligations—all of which coexist and interact.[45] Constitutional ideas have a great impact on modern criminal law. In countries like India, Canada, and South Africa, criminal laws are regularly measured against constitutional guarantees, including the rights to equality, freedom, and dignity.[46] A constitutional standard is the concept of proportionality, which evaluates the validity of criminal penalties. Furthermore, particularly with regard to fair trial rights and the ban on severe punishment, international human rights instruments have more and more influence on domestic criminal law. Austin's model cannot include these inter-normative connections.[47] His paradigm lacks the conceptual tools required to clarify constitutional supremacy, the role of international law, or the decentralisation of legislative power to administrative agencies. Moreover, the idea of a single sovereign authority is made more difficult by the multiple legal systems inside the same state—such as religious tribunals, tribal councils, or customary law forums. In many cases, legal validity comes from participation in a diverse and reflective legal system rather than following a single authority.[48] Austinian formalism falls short of properly handling such complexity.

A basic idea of criminal liability is that culpability calls for both the act of a prohibited act (actus reus) and a culpable mental state (mens rea).[49] The distinction between innocent and guilty action depends on the idea of mens rea—whether stated as intention, recklessness, knowledge, or negligence. Evaluating guilt, deciding penalties, and preserving fairness inside the criminal justice system all depend on this subjective component. Austin's method, on the other hand, is structurally unaware of these issues. His method, seeing laws as wide orders backed by threats, ignores the personal circumstances required for the enforcement of such orders.[50] Should a person ignore a command, they face the appropriate punishment regardless of their mental state or understanding capacity. Clearly, this mechanical reading of legal responsibility conflicts with the normative foundation of criminal law. Mens rea holds a degree of moral agency and cognitive engagement with legal criteria. It relates to the actor's internal attitude about their deeds and the consequences that follow. Often, criminal laws require that an act be done "knowingly," "intentionally," or "maliciously" rather than just as an action.[51] These qualifiers provide a normative evaluation that goes beyond Austin's basic approach. Generally speaking, strict liability crimes—which do not call for mens rea—are confined to regulatory violations and are defended on

[43] Hart (n 6) 185–187.
[44] ibid 88.
[45] Neil MacCormick, *Institutions of Law* (OUP 2007) 98–105.
[46] Maneka Gandhi v Union of India (1978) 1 SCC 248.
[47] Lucia Zedner, *Criminal Justice* (OUP 2004) 91–93.
[48] Brian Tamanaha, *A General Jurisprudence of Law and Society* (OUP 2001) 135.
[49] Ashworth and Horder (n 3) 107–110.
[50] Austin (n 1) 29–30.
[51] Jeremy Horder, *Ashworth's Principles of Criminal Law* (10th edn, OUP 2022) 122–123.

utilitarian grounds rather than as examples of the perfect criminal standard.[52] Moreover, modern neuroscience and psychology have begun to shape debates on criminal responsibility, particularly in relation to diminished capability, mental disease, or young offenders.[53] These findings challenge simple, prescriptive views of guilt and call for a more complex examination of human agency, capacity, and purpose. Austin's approach falls short in addressing these changes since it stresses external conformity above interior guilt.

Modern Criminal Law's Austinian Thought's Endurance and Development

Though especially by H.L.A. Hart and later scholars, John Austin's command theory of law has drawn much criticism; still, aspects of Austinian philosophy survive in many spheres of contemporary criminal jurisprudence. These survivals are especially clear in the areas of command-and-control systems under regulatory criminal law, public order laws, and strict liability crimes. This chapter examines these areas to show the ongoing impact of Austin's formalistic and coercive reading of law in practice, notwithstanding the development of jurisprudence towards more complex ideas of legal positivism. The conversation simultaneously compares these survivals to Hart's major criticism, particularly his conceptual separation between primary and secondary standards, which has changed the basic principles of legal positivism. The lasting impact of Austinian thought in certain sectors of criminal law indicates not an uncritical support of the command theory, but its partial relevance inside a more heterogeneous and functionally different legal system.

The idea of strict responsibility is a notable illustration of the persistent character of Austin's legal theory. In such cases, criminal responsibility is given regardless of the defendant's purpose, knowledge, or carelessness.[54] This greatly reduces the requirement of mens rea, hence matching criminal responsibility more closely with Austin's view of law as general commands backed by forceful actions. The emphasis is on following a law set by the government, the modern sovereign, rather than on the moral guilt of the individual actor. Sometimes statutory crimes connected to public safety, environmental protection, and health regulations hold people and companies responsible without requiring evidence of misconduct.[55] Examples include violations of building codes, breaches of food hygiene requirements, and the distribution of illegal drugs.[56] In these cases, the basic rationale is utilitarian: the need for efficient deterrent outweighs the usual need for guilty intent. Policy reasons support this interpretation since it fits Austin's view that the efficacy of laws results from the fear of punishment rather than an internalised feeling of moral obligation.[57] Enforcing rigorous responsibility is a contemporary manifestation of the command paradigm in which legal rules act as prescriptive norms maintained by compulsion rather than justified by consent or ethical concerns. Critics argue that the absence of a mental component undermines the moral legitimacy of punishment, hence challenging the consistency of strict liability in a fair criminal justice system.[58] Still, the ongoing presence of strict liability crimes in different nations highlights the enduring relevance of Austin's conceptualisation in

[52] Andrew von Hirsch, *Censure and Sanctions* (Clarendon Press 1993) 61–62.
[53] Stephen J Morse, 'Brain Overclaim Syndrome and Criminal Responsibility: A Diagnostic Note' (2006) 3 Ohio St J Crim L 397.
[54] Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (9th edn, OUP 2023) 140–145.
[55] Glanville Williams, *Criminal Law: The General Part* (2nd edn, Stevens 1961) 239–241.
[56] Law Commission of India, *Report No. 156: Indian Penal Code* (1997) ch 4.
[57] John Austin, *The Province of Jurisprudence Determined* (1832; Hackett Publishing 1998) 14–20.
[58] Victor Tadros, *Criminal Responsibility* (OUP 2005) 65–67.

situations when blame is less important than compliance.

Public order laws also reflect a command-oriented approach in which the preservation of social control by means of deterrence is typically seen as the purpose of law. Laws against unlawful assembly, rioting, incitement to violence, and sedition usually presume that authority orders must be carried out to prevent disturbance, ignoring personal motivation or individual intent. Section 163 of the Bhartiya Nagrik Suraksha Sanhita, 2023 in India gives executive magistrates power to order fundamental rights restrictions in expectation of civil disturbance.[59] Such orders' legal legitimacy depends on executive approval rather than the showing of criminal intent. Likewise, laws against hate speech or indecent expression sometimes use vague and too broad language that empowers the government to define the boundaries of permissible conduct.[60] These laws show Austin's claim of a clear sovereign whose orders have to be fulfilled under penalty of punishment. Exemplifying Austinian legal theory, the hierarchical structure of these legal systems gives compliance first priority over involvement or conflict.[61] Moreover, these actions often survive court scrutiny under allegations of executive need or national security, hence highlighting the supremacy of authority inside their legal system. Public order laws' use of coercive power draws attention to the tensions between Austinian positivism and constitutionalism. The latter stresses ideas of rights, due process, and proportionality, hence challenging the validity of law by itself as a mandate.[62] The ongoing presence of such legislation implies that Austinian ideas still have influence when the state's need for control is deemed vital.

Particularly in industries governed by the "command-and-control" approach, regulatory criminal law is a third area where Austinian themes persist. These include company compliance, tax, environmental law, and financial regulation. Such systems compel compliance with set standards by use of legislative mandates backed by administrative penalties and criminal sanctions. Under the command-and-control framework, authorities set detailed rules, monitor compliance, and impose penalties for infractions.[63] Usually operating prospectively, applied uniformly, and relying on strong enforcement—qualities that mirror Austin's legal system, the rules reflect these characteristics.[64] From this perspective, the sovereign is usually a legislative power or regulatory body whose orders must be followed without requiring judicial creativity or ethical reflection. While keeping the coercive nature of Austin's framework, regulatory criminal law usually combines civil and criminal elements. Look at insider trading regulations or anti-money laundering policies, where legislative requirements are rigorously enforced by the possible imposition of fines, imprisonment, or disqualification. In this setting, legal accountability comes from the authoritative order of a rule-making body rather than from social consensus or moral concerns. Still, these systems have evolved to include more participatory and responsive regulatory approaches such stakeholder involvement, negotiated rule-making, and compliance assistance.[65] These trends indicate a slow change from a purely command-based strategy to a more flexible, dialogic approach to governing. The basic structure of regulatory compliance law still shows Austinian formalism.

H.L.A. Hart especially attacked Austin's theory for neglecting the fundamental structure and complexity

[59] Bhartiya Nagrik Suraksha Sanhita, s 163.
[60] Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution* (OUP 2016) 98–105.
[61] Austin (n 4) 197–199.
[62] Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (CUP 2012) 85.
[63] Karen Yeung, *Regulating with Rationality* (Hart Publishing 2009) 131–134.
[64] Robert Baldwin and Martin Cave, *Understanding Regulation* (2nd edn, OUP 2012) 38.
[65] Julia Black, 'Critical Reflections on Regulation' (2002) 27 Aust J Legal Phil 1, 14–17.

of legal systems.[66] Hart replaced the notion of law as command in The Concept of Law with a rule-based system, so distinguishing between "primary rules" (which impose duties) and "secondary rules" (which provide powers, including rules of recognition, modification, and adjudication).[67] Rather than as coercive hierarchies, this idea helps to understand legal systems as institutionalised normative orders. Unlike Austin's one sovereign, Hart's theory acknowledges the many rule-makers and the interpretive efforts creating legal legitimacy.[68] Hart's approach seamlessly includes the power of courts, the function of precedent, and the authority of constitutions. Importantly, Hart's approach recognises the "internal point of view" of legal actors who consider rules as standards of behaviour rather as only dreading penalties. For criminal law, this difference is rather important.[69] Hart emphasises the need of secondary standards, hence providing a conceptual foundation for legal interpretation, judicial review, and due process. Unlike Austin, Hart's approach clarifies the development of norms, the establishment of new rights, and the institutionalisation of procedural safeguards.[70] Hart's legal theory therefore offers a more sophisticated and contextually conscious reading of modern legal systems. Hart, though, does not completely ignore the forceful side of law. He understands that, especially for those who do not internalise legal criteria, the possibility of penalties is a fundamental component of criminal law. In this respect, Hart's theory exceeds Austin's conceptual limits yet still has his functional insights.

More complex versions of legal positivism have mostly superseded pure command theory in contemporary legal conversation. Joseph Raz has described the "service conception of authority," whereby law claims rightful authority by providing exclusionary justifications for action.[71] Similarly, scholars like Neil MacCormick and Jules Coleman have created readings of positivism that include interpretive processes, institutional roles, and moral thinking without mixing with natural law theory.[72] These patterns show increasing discomfort with Austin's straightforward approach. In criminal law, the command theory has proven inadequate as a whole explanation in light of ideas of guilt, moral agency, and constitutional legitimacy. Still, the basic elements of Austinian positivism—particularly the emphasis on clarity, hierarchy, and enforceability—continue to have impact in certain situations. Austinian ideas of law as authoritative command might also resurface with stronger force during times of political unrest, authoritarianism, or legal populism. Some governments' tendency to criminalise dissent, bypass judicial control, and centralise legal power reveals the ongoing appeal—and danger—of Austin's legacy.[73]

Conclusion

This paper has carefully examined the relevance and limitations of John Austin's command theory of law under the context of present-day criminal jurisprudence. This paper has thoroughly examined the conceptual foundations of Austin's model, particularly his view of law as a command from a sovereign enforced by sanctions, therefore exposing both the enduring appeal and the theoretical flaws of Austinian jurisprudence in the setting of contemporary criminal law. Austin's main claim was first

[66] HLA Hart, *The Concept of Law* (2nd edn, Clarendon Press 1994) 18.
[67] ibid 94–95.
[68] ibid 88.
[69] ibid 117–123.
[70] ibid
[71] Joseph Raz, *The Morality of Freedom* (Clarendon Press 1986) 23–30.
[72] Neil MacCormick, *Institutions of Law* (OUP 2007) 110; Jules L. Coleman, *The Practice of Principle* (OUP 2001) 95.
[73] Tom Ginsburg and Aziz Huq, *How to Save a Constitutional Democracy* (University of Chicago Press 2018) 63–66.

defined as follows: that law basically reflects the expression of a sovereign's desire, maintained by the credible fear of punishment. Though it provides a definite hierarchical structure, this model reduces legal obligation to only compliance and views law in an utterly formalistic and coercive way. At its core, Austinian philosophy views criminal law as a set of prohibitions—such as "Thou shalt not kill"—whose legal legitimacy derives from the sovereign's power and capacity to execute punishment rather than from moral justification or procedural fairness. This paper shows that certain features of criminal law—especially its focus on prohibition, state-imposed fines, and social control—fit Austin's model. The structural effect of Austinian ideas is shown by the prevalence of strict liability crimes, the persistence of command-and-control systems in regulatory legislation, and the broad use of public order acts. These characteristics show how modern criminal law usually runs on hierarchical, deterrence-oriented legal standards that fit Austin's notion of law as command. Still, Austin's method is clearly lacking in dealing with the normative and interpretive elements supporting much of modern criminal law even with these structural parallels. Modern criminal law is closely related to constitutional systems, due process guarantees, and human rights principles—all of which call for a more complex and participative understanding of legal duty than Austin's paradigm allows. The important elements of criminal law—judicial interpretation, the need of mens rea, the development of legal defences, and the proportionality of punishment—demand a theoretical framework that can include moral reasoning, institutional complexity, and the points of view of legal professionals. Austin's austere, one-size-fits-all design ignores these particular traits. Austin's theory and Hart's criticism in contrast have made these boundaries clear. Hart's emphasis on the internal aspect of legal norms, his distinction between main and secondary rules, and his formulation of the rule of recognition provide a more complete picture of how law functions in modern democratic nations. Hart's approach includes the evolution of legal norms, the judicial interpretive process, and the integration of moral and procedural elements—all of which are crucial for understanding criminal law as more than just a system of orders and threats. Still, in certain contexts Austin's model has analytical utility. In legal systems characterized by authoritarianism, presidential supremacy, or emergency powers, the law often operates in a way similar to Austin's command theory. The sovereign is definite, judicial discretion is restricted, and the main goal of law is coercive. Austin's theory can serve as a descriptive tool for understanding the claim and preservation of legal power in such contexts.

Moreover, Austinian ideas could still be useful in the field of public regulation and broad compliance, where legal rules seek to standardize behavior and need little interpretation. Ultimately, although Austin's command theory of law offers a simple and structurally consistent view on the coercive forces of criminal law, it falls short of covering the complicated normative, interpretive, and institutional features of modern criminal legal systems. Its enduring influence, particularly in formalist or authoritarian contexts, underlines its historical relevance and stresses the need for more pluralistic and ethically sensitive legal systems.